Supreme Court, U. S.
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No. 77-768

In the

Supreme Court of the United States

OCTOBER TERM, 1977

THE COUNTY OF COOK, a body politic and Corporate, and SIDNEY R. OLSEN, Registrar of Titles, Cook County, Illinois,

Petitioner,

vs.

UNITED STATES OF AMERICA,

and

JOHN NEAL and ROSA NEAL

and

MINNESOTA MUTUAL LIFE INSURANCE COMPANY,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	2
STATEMENT OF FACTS	2
STATUTORY PROVISIONS INVOLVED	3
ARGUMENT	6
CONCLUSION	10
APPENDIX	1a

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To The Honorable Chief Justice of the United States and The Associate Justices of The Supreme Court of The United States:

Respondents, John Neal and Rosa Neal, respectfully pray that a Writ of Certiorari to revue the order and unpublished opinion of the United States Court of Appeals for the Seventh Circuit entered August 25, 1977 be denied.

QUESTIONS PRESENTED

I. Whether a notice of tax lien filed by the United States Government on March 29, 1966, in the Office of the Recorder of Deeds of Cook County, Illinois, successfully created a federal tax lien which was valid against subsequent bona fide purchasers for value of real property registered under the Torrens system of title registration?

II. Whether the decision of the Court of Appeals holding that respondents are entitled to awards of attorneys' fees as damages provided by the "Torrens Act of Illinois", Illinois Revised Statutes, Chapter 30, Section 138 is erroneous?

III. Whether the petitioners were prejudiced by the issuance of an "Order" that was, pursuant to the mandate of Circuit Rule 35, unpublished and uncitable?

STATEMENT OF FACTS

The facts as alleged by petitioners in their Petition for a Writ of Certiorari, on pages 7, 8, 9 and 10 thereof, are substantially correct and respondents, Neal, will abide by same for their brief in opposition to said petition.

STATUTORY PROVISIONS INVOLVED

Illinois Revised Statutes, 1967, Chapter 30, Section 131:

> "Any person feeling himself aggrieved by the action of the registrar, or by his refusal to act in any matter pertaining to the first registration of land, or any estate or interest therein, after the first registration of any transfer of or charge upon the same, the filing or neglect or refusal to file any instrument, or to enter or cancel any memorial or notation, or to do any other thing required of him by this Act, may file his petition in the circuit court in the proceeding in which the land was registered, making the registrar and other persons, whose interest may be affected, parties defendant, and the court may proceed therein and make such order or decree as shall be according to equity in the premises and the purport of this Act. Nothing contained in this section shall bar such person from filing an original complaint or petition in such cases in any court of competent jurisdiction."

Illinois Revised Statutes, 1967, Chapter 30, Section 133:

> "The court may in any case contemplated in Section 130 and Section 131 in addition to the costs, award such damages, including reasonable attorney's fees, as it shall deem just in the premises. The damages and costs so awarded shall be payable out of the indemnity fund created by Sections 136 and 137 of this Act, in the manner provided by Section 139 of this Act."

Illinois Revised Statutes, 1967, Chapter 30, Section 136:

> "Upon first bringing the land under the operation of this act consequent upon the application of the

owner, as hereinbefore provided, and upon the issuance of a certificate of title pursuant of Section 120 and also upon the entry of a new certificate showing some one either by devise or by descent as registered owner, there shall be paid to the registrar one-tenth of one per cent of the value of such land. Such value shall be ascertained by the registrar."

Illinois Revised Statutes, 1967, Chapter 30, Section 138:

This section is set out verbatim in the order of the United States Court of Appeals for the Seventh Circuit decided August 25, 1977, and contained on pages 8a and 9a in the Petition for a Writ of Certiorari filed by the petitioners herein."

Illinois Revised Statutes, 1967, Chapter 30, Section 139:

"Said indemnity fund shall be held to satisfy judgments obtained or claims allowed against the county for losses or damages as aforesaid. Such claims for damages may be presented to the county board, and such county boards are hereby authorized and empowered to allow or reject the same in accordance with such practice as may be by them adopted, and to provide for the payment of such claims as may be allowed. The rejection of any claim so presented shall be no bar to the bringing of suit for the same in any court of competent jurisdiction. No claims for such losses or damages shall be allowed and paid by any such county board unless upon the recommendation of the registrar who shall be in office at the time said claim shall be allowed. Upon the rendition of a judgment by a court of competent

jurisdiction upon such claim, or upon the allowing of such claim by a county board, payment thereof shall only be made upon the order of such county board. Until the indemnity fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund."

Illinois Revised Statutes, 1967, Chapter 30, Section 147:

"This act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent."

ARGUMENT

QUESTION I.

Respondents, Neal, take no position on this issue raised by the petitioners, for the following reasons:

(a) If this Court denies Certiorari and in fact does affirm the judgment in favor of the Government then said judgment must be paid and satisfied by petitioners, The County of Cook and Registrar of Titles, OR

(b) If this Court does grant Certiorari and does in fact reverse the judgment of the District Court and the Court of Appeals then the Government's tax lien against the real property of the respondents' Neal, created by the notice of tax lien in question, is defective and falls and will no longer be a valid and subsisting lien on their realty.

QUESTION II.

The petitioners contend that the Court of Appeals erred when it affirmed the District Court's award of attorneys' fees to the respondents, Neal and Minnesota Mutual Life Insurance Company.

The petitioners cite various federal cases and particularly the Court's recent opinion in *Aleyska Pipeline Service Company* v. *Wilderness Society,* 421 U.S. 240 (1975) to sustain their contention, but they fail to acknowledge that the attorneys' fees awarded in the case at bar were awarded by statutory authorization in the form of damages to the respondents as provided under the Torrens Act of Illinois, Ill. Rev. Stat. Chap. 30, Section 138.

The facts in the case at bar are uncontroverted that the respondents, Neal, purchased from the petitioners a Statutory Federal Tax Lien Search, for a monetary consideration, which said tax lien search when issued showed the title to the realty in question to be free and clear of all federal tax liens. (Appendix on page **(1a) hereof.)**

The facts are further uncontroverted that the respondents, Neal, purchased from the petitioners a Torrens Duplicate Certificate Of Title (the original of which remains of record and on file in the Office of the Registrar of Titles), which certificate of title is a form of title insurance and when issued bore no memorial on its face with respect to the Government's tax lien, which is one **of the subject matters in issue. (Appendix on pages 2a and 3a hereof.)**

The facts are further uncontroverted that the respondents, Neal, called upon the petitioners to defend them in the Government's action to foreclose it's tax lien, but that the petitioners refused and failed to come to their defense in said suit. (Appellants' Appendix filed in the United States Court of Appeals for the Seventh Circuit, Nos. 1752 and 1915, on page 314.)

Respondents, Neal, contend that petitioners, The County of Cook and Registrar of Titles, acting through their examiners of titles, their deputies or clerks, were guilty of such omission, mistake or misfeasance, in failing to show the Statutory Federal Tax Lien on its' tax lien search or as a memorial on its' Torrens Duplicate Certificate of Title, as is contemplated by Ill. Rev. Stat. Chap. 30, Section 138, and because of such omission, mistake or misfeasance and because of the refusal and failure of the petitioners to defend the respondents, Neal, in the

Government's suit to foreclose it's lien, they were necessarily forced to hire legal counsel to defend said suit and to become obligated to pay attorney's fees and expenses for said defense.

As is pointed out in the "Order" of the Court of Appeals, the issue is whether Ill. Rev. Stat. Chap. 30, Section 138, authorizes an award of attorneys fees. The Court found in its opinion that the "damages" allowed in Section 138 should be construed in conjunction with the other provisions of the act.

The Court further found that the explicit intent of the Torrens Act is to protect the purchaser of property registered under the system and that one who takes from a registered owner holds his interest with assurance that his title will not be defeated by defects in the certificate of registration.

The Court points out that Section 131 of the act provides jurisdiction for suits by "aggrieved" parties against the Registrar of Titles for losses incurred. Section 133 of the act defines damages as including "reasonable attorney's fees". Sections 136 and 139 created an indemnity fund for the satisfaction of judgments and claims against the Registrar and for the payment into said indemnity fund of one-tenth of one per cent of the value of the land upon same being first brought under operation of the act.

Finally, Section 147 of the act sets out an explicit mandate that the act "shall be construed liberally so far as is necessary for the purpose of effecting its general intent".

Respondents, Neal, concur with the finding of the United States Court of Appeals when it stated in its

said Opinion of August 25, 1977 that "the general and explicit intent of the Torrens Act of Illinois is to protect innocent purchasers and should be liberally construed as provided in Section 147 of the act and the specific inclusion of attorney's fees as an element of damages as provided in Section 133 thereof.

QUESTION III.

The contention that the petitioners were prejudiced by the "Order" and "Opinion" of the Court of Appeals for the Seventh Circuit entered on August 25, 1977 as an unpublished opinion in accordance with Rule 35 is not only preposterous but damaging in that it tends to bring the Federal Appellate system, its judiciary and the entire administration of justice into disrepute by suggesting that judges of Appeals courts, when rendering opinions under Rule 35, are not careful and do not give their decisions the judicial consideration that they demand, that said decisions and opinions are not given thoughtful analysis and application of law and fact and undermines the "rightness" of the judge's decision making.

The petitioners suggest that Judges of Courts of Appeal render two types of opinions. The first type "Published Opinions" are given the highest degree of care, thoughtful process of law and facts, and the second type, the "Unpublished Opinions" which are rendered in a careless and slipshod manner without weighing the facts and applicable law because they will not be cited as precedent in subsequent cases.

Such thought and contention by the petitioners who represent a body politic as illustrious as Cook County, Illinois, is unworthy of comment and further discussion by respondents, John and Rosa Neal.

CONCLUSION

For the reasons stated, Respondents, John Neal and Rosa Neal, pray that the petition of The County of Cook and Sidney R. Olsen, Registrar of Titles, for a Writ of Certiorari to issue to the Court of Appeals for the Seventh Circuit to review its decision be denied.

Respectfully submitted,

ALLEN J. SUCHERMAN
19 S. LaSalle Street
Chicago, Illinois 60603
(312) 332-7334
Attorney for John Neal and Rosa Neal, Respondents

APPENDIX

STATUTORY FEDERAL TAX LIEN SEARCH

DOCUMENT NO. GP 74 1 00

PRESENT PARTIES IN INTEREST:
ANNE DAVIS
SHELDON DAVIS
MARY GINSBERG
SYDNEY S. GINSBERG

DATE OF SEARCH:

RESULT OF SEARCH:
None 1/19/68 cm
None 1/19/71 cm

INTENDED GRANTEES OR ASSIGNEES:
JOHN E NEAL
ROSA C NEAL

VERIFIED No. 5-4 SIDNEY R. OLSEN REGISTRAR OF TITLES

RESULT OF SEARCH:
None 1/19/72 cm
2/2/00 cm
3rd Party Search
Ex 1 & - C

APPLICATION NO (1) (2) 7301-15084
DOCUMENT NO 2369679

APR 4 1968

VOLUME 2080-1 PAGE 163
CERTIFICATE NO 1037324
OWNER JOHN E. NEAL ET UX

163

CERTIFICATE OF TITLE

Date Of First Registration
(1) January Fourteenth (14th), 1915
(2) March Twenty Fourth (24th), 1924
TRANSFERRED FROM CERTIFICATE NO 791600

STATE OF ILLINOIS } ss.
COOK COUNTY }

I Sidney R. Olsen Registrar of Titles in and for said County, in the State aforesaid, do hereby certify that

JOHN E. NEAL and ROSA L. NEAL
(Married to Each Other)
NOT IN TENANCY IN COMMON, BUT IN JOINT TENANCY

of the CITY OF CHICAGO County of COOK and State of ILLINOIS

ARE the owner s of an estate in fee simple, in the following described land situated in the County of Cook and State of Illinois.

DESCRIPTION OF LAND

LOT NINETEEN ..... (19)
LOT TWENTY ..... (20)

In Block Two (2) in E. F. George's Subdivision of the Northwest Quarter (¼) of the Northwest Quarter (¼) of the Northeast Quarter (¼) of Section 28, Town 38 North, Range 14, East of the Third Principal Meridian.

Subject to the Estates, Easements, Incumbrances and Charges noted on the following memorials page of this Certificate.

Witness My hand and Official Seal

this NINETEENTH (19th) day of JANUARY A. D. 1968

DR 1/19/68

Registrar of Titles, Cook County, Illinois.

Delivered by Mail

MEMORIALS

OF ESTATES, EASEMENTS, INCUMBRANCES AND CHARGES ON THE LAND.

MENT O.	NATURE AND TERMS OF DOCUMENT	DATE OF DOCUMENT	DATE OF REGISTRATION YEAR-MONTH-DAY-HOUR	SIGNATURE OF REGISTRAR
	General Taxes for the year 1967			
	Subject to General Taxes levied in the year 1968			
	Agreement entered into between Frank T. Pajkowski and Pearl B. Pajkowski, owners of foregoing premises, and the owners of Sundry Lots fronting on the West Side of Clyde Avenue to and including the East Side of Euclid Avenue between 79th and 80th Streets and the West Side of Jeffery Avenue (except church property) to and including the East Side of Euclid Avenue, between 80th and 81st Streets. Also including the South Side of East 79th Street between Clyde and Euclid Avenues in the City of Chicago, affecting the use, occupation, sale, gift, conveyance of leasing of said premises to any Negro or Negroes. For particulars of this agreement and the parties thereto see Document.	Nov. 15, 1929	Dec. 30, 1930 2:28 PM	
1	Mortgage from John E. Neal and Rosa L. Neal, his wife, to O'Brien & Pain, Inc., a corporation of Delaware, to secure their note in the principal sum of $27,300.00, payable as therein stated. For particulars see Document.	Dec. 1, 1967	Jan. 19, 1968 11:42 AM	
2	Assignment from O'Brien & Pain, Inc., a corporation of Delaware to The Minnesota Mutual Life Insurance Company of Saint Paul, a corporation of the State of Minnesota, of Mortgage and Note registered as Document No. 2369680. For particulars see Document.	Jan. 16, 1968	Feb. 2, 1968 1:30 PM	
	Mortgagee's Duplicate Certificate # 468571 issued 2/2/68 on Mortgage # 2369680			